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September 11, 2015

Via MEC Filing

The Honorable Muriel Ellis, Clerk
Supreme Court of Mississippi
450 High Street
Jackson, Mississippi 39201

Re: Wellness, Inc. v. Pearl River County Hosp., No. 2014-CA-01696-SCT

Dear Ms. Ellis:

Counsel for Wellness, Inc. has on this date filed a M.R.A.P. 28(k) letter. Pursuant to that rule, Pearl River County Hospital submits the following response.

On a plaintiff's Rule 56 motion as regarded an alleged extension of his contract, Judge Bramlette of the United States District Court for the Southern District of Mississippi ruled as follows:

> Ideally, the contract itself would be made part of the minutes when the board votes to approve it. But even where this is not done, "a contract with a public board may be enforced if enough of the terms and conditions of the contract are contained in the minutes for determination of the liabilities and obligations of the contracting parties without the necessity of resorting to other evidence." *Thompson v. Jones Cnty. Cmty. Hosp.*, 352 So. 2d 795, 797 (Miss. 1977). Whether Kennedy has satisfied this requirement is a fact issue. Therefore, the Court will deny the motion and leave the determination of the validity of the 2012 contract for the jury.

Kennedy v. Jefferson County, 2015 U.S. Dist. LEXIS 90613, at *19–20 (S.D. Miss. July 13, 2015). Whether or not this ruling was correct on the merits, it does not apply to the present case, for two reasons.

First, in *Thompson* itself, the circuit court had granted the county's motion to dismiss on the basis that the minutes did not hold sufficient evidence of any alleged contract of employment. *Thompson*, 352 So. 2d at 795. This Court did not reverse for a trial on the merits, but rather affirmed. *Id.* at 797–98. Thus, merely claiming that the minutes held "enough of the

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terms and conditions of the contract" does not suffice to get one to a finder of fact, if no genuine issue of material fact is raised.

Second, any necessary findings of fact as regards the existence of an agreement to arbitrate are properly made by the trial court itself. While § 4 of the Federal Arbitration Act has not been held applicable to state courts by the U.S. Supreme Court, it does envision findings of fact as to the existence of an arbitration agreement, and it does provide for those to be made by the court, not by a jury, if the party resisting arbitration (here, the Hospital) does not request a jury trial. 9 U.S.C. § 4.

The Hospital submits that this Court appears to have implicitly followed § 4. In the case just supplied by the Hospital in its Rule 28(k) letter of September 10, 2015, *Trinity Mission Health & Rehab of Holly Springs, LLC v. Lawrence*, 19 So. 3d 647 (Miss. 2009), the trial court ruled on the fact issue of whether one party had signed the agreement, and this Court affirmed the trial court's findings of fact denying the motion to compel arbitration. *Lawrence*, 19 So. 3d at 651–52. Whether or not the trial court in the present case made express findings of fact in its order "this Court generally presumes that with no findings of fact in the record, the trial court resolved all findings in favor of the appellee." *Rogers v. Rogers*, 662 So. 2d 1111, 1116 (Miss. 1995).

Thus, the Hospital submits that the authority supplied by Wellness, Inc. is not pertinent to this appeal.

We thank the Court for its attention to this letter.

Sincerely yours,

COPELAND, COOK, TAYLOR & BUSH, P.A.

s/ Andy Lowry
Andy Lowry

cc: All counsel of record (via MEC)